



Appeal Decision

Site visit made on 12 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/V3310/W/22/3313542

Land at OS GR 337743 132821, Back Lane, Middlezoy

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Summerfield Homes against the decision of Sedgemoor District Council.
 - The application Ref 34/21/00008, dated 4 October 2021, was refused by notice dated 15 December 2022.
 - The development proposed is erection of 26 dwellings, incidental open space, drainage, landscaping and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 26 dwellings, incidental open space, drainage, landscaping and associated infrastructure at Land at OS GR 337743 132821, Back Lane, Middlezoy, in accordance with the terms of the application, Ref 34/21/00008, dated 4 October 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Summerfield Homes against the Council. That application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the development on highway safety.

Reasons

4. The site would be accessed from Back Lane which, for most of its length along with the adjoining Nethermoor Road, is a narrow single carriageway road at the edge of the village. A shorter length of Back Lane, from the proposed site access to its junction with Main Road outside The George Inn public house (the Main Road junction), is slightly wider although still insufficient for two vehicles to pass along much of its length.
5. The Main Road junction is an irregular cross roads. Back Lane is off-set from the opposing Old Chapel Road, and Main Road also curves through the cross roads around adjoining properties. The consequence is that visibility from and of emerging traffic at both Back Lane and Old Chapel Road is impaired, particularly to the south from Back Lane, and the North from Old Chapel Road.
6. While there is no evidence of accidents leading to personal injury at the junction, local residents have identified numerous unreported minor incidents and near-misses at and around the junction. I understand that various previous proposals for development on Back Lane have been rejected due to

inadequacies in the road network in this location, and there is no dispute that the current arrangements are not suitable to accommodate the likely increase in traffic from the development.

7. This proposal includes revisions to the road markings at the Main Road Junction and formalisation of a passing bay outside Oakley House at the corner of Back Lane and Nethermoor Road, opposite the site access. The passing place would involve an area that visually appears to be beyond the highway boundary but which has been shown to be part of the highway maintainable at public expense.
8. At the Main Road junction, no physical works to the carriageway would be undertaken. The revised markings and accompanying signage would introduce a priority system where traffic on Main Road was subject to single-lane operation at this point with southbound traffic receiving priority over vehicles travelling north. In turn, this would allow the give way markings for Back Lane and Old Chapel Road to be moved further into the Main Road carriageway, improving visibility.
9. The narrowing would be defined by the repositioned give way lines and hatched areas either side of the junction. In this way, the ability for large vehicles to access Back Lane, including various farms in the area, would not be compromised and the Local Highway Authority (LHA) have confirmed that the absence of physical features or existing street lighting means that no lighting would be required. As such, the low key visual appearance of the works would not harm the rural character of the village. Road markings could become eroded over time, but there is no clear reason that this should be to any greater extent than any other junctions, such that it would not be addressed through routine maintenance programmes.
10. There is some suggestion that the revised arrangements might be confusing due to the junctions within the priority section. The Local Planning Authority (LPA) has raised no concern about the physical design of the junction accepting that, if it operates as intended, it would be acceptable. Moreover, it would not be unique for a junction to exist within such a location and there is no substantive evidence that such arrangements cause confusion or highway safety problems. While the priority arrangement means that vehicles may have to periodically wait to pass through the junction, given local traffic levels, this is unlikely to cause delays or congestion so significant as to erode quality of life, or encourage 'rat-running' along the far more tortuous Back Lane and Nethermoor Road.
11. Following various revisions to the proposed highway works, and notwithstanding some visibility shortcomings along Back Lane around the wall to the public house car park, the LPA now accept that the proposed works could mitigate the potential harm to highway safety, provided that they are accompanied by a Traffic Regulation Order (TRO) to reduce the speed limit and introduce parking restrictions around the site and Main Road junction.
12. The works to the highway themselves could be secured via planning conditions, but a TRO would require further consultation and a separate decision-making process, such that its ultimate success cannot be guaranteed. As such, a condition requiring it to be implemented may not be reasonable and I have determined the appeal on the basis that one may not be secured. It is of considerable weight that the planning officer's report confirms the LHA position

that, while desirable, the absence of a TRO would not make the scheme unacceptable in highway safety terms. However, I have nevertheless considered the implications in some detail, based upon the available evidence and my own observations.

13. The works to Back Lane would result in two formalised passing opportunities on Back Lane between Main Road and the site. One would be at the access to The George Inn car park, where the road begins to narrow to a single vehicle width, and another to the front of Oakley House. There is significant parking pressure in the area from local residents and patrons of the public house, so theoretically, without associated parking restrictions, vehicles could park in these areas.
14. However, vehicles parked in the area to the front of Oakley House would block access to its private drive. There is a fairly large amount of parking available within the property at Oakley House, so overflow parking onto the highway is unlikely and has not been shown to be a regular occurrence now. Indiscriminate parking here for any significant period of time is, therefore, very unlikely and there is no obvious need to formally restrict parking in this location in order to safeguard use of the passing space. The same can be said of the existing area at the entrance to the public house car park.
15. During my site visit, I witnessed parking alongside the northbound lane to the north of the Main Road junction, extending from an informal widening into the fully metalled carriageway. I did not see any parking opposite this, in the southbound lane, directly alongside the public house, nor have I been provided with substantive evidence that it happens regularly. While I cannot say that it does not happen at all, the presence of parking on the opposite side of the road, a pedestrian step that protrudes into the carriageway, close proximity to the junction and likely path of turning vehicles, would all appear to deter parking here. Formal parking restrictions within the small hatched area in the southbound lane are, therefore, unnecessary.
16. If parking did occur in the hatched area of the northbound lane to the north of the junction, it would impede visibility on egress from Old Chapel Road. However, this would be no different to the current situation and there is less likely to be significant increases in traffic flow from Old Chapel Road than Back Lane. While approaching traffic from the north would be forced closer to that emerging traffic, the resultant visibility from the repositioned give way lines, if a car were parked in the hatchings, would not be significantly different to now.
17. To the south of the junction, the hatched area on the northbound lane would be between the new give way markings and the junction with Old Chapel Road. Notwithstanding that this would be an unusual location to choose to park, a vehicle parked there would not obstruct driver visibility of oncoming vehicles through the priority area. Nor would it interfere with turning movements into Old Chapel Road when compared to the existing situation. Emerging visibility towards the south from Old Chapel Road would be better than now.
18. On the opposite side of Main Road, the southbound hatching would stop alongside the give way lines, allowing a car to pass a vehicle waiting to travel north. Vehicles parked here could obstruct traffic within the priority movement area making it difficult or, at worst, impossible to pass a car waiting at the Main Road give way markings. Thus, a vehicle may have to wait within the junction area for a northbound vehicle to pass against the priority markings.

However, that too would be little different to the current situation if cars were parked here now, as it would also have the effect of reducing this section of Main Road to single lane operation. Any additional traffic from the development, which is said to be around one vehicle every 3 minutes at peak times, would simply have to wait, but the repositioned markings would, nevertheless, give better visibility around any obstruction.

19. Outside the hatched areas, away from the junction, the situation would be no different to a scenario where vehicles chose to park alongside the road now. With regard to the above observations, I have no reason to reject the LHA's position that the parking restrictions that could be secured through a TRO are not necessary for the highway works to be implemented and additional traffic accommodated safely.
20. The other aspect of the TRO would be to reduce the speed limit around the Main Road junction and vicinity of the site to 20 miles per hour. Visibility from and of traffic emerging from Back Lane to the north currently exceeds that required for the measured speeds and would be improved by the re-aligned give way markings. While this is based upon a 2m set back for measuring the splay, the LHA have not raised any suggestion that such measurement would be inappropriate, despite the central location in the village.
21. Visibility would remain substandard to the south and for traffic emerging from Old Chapel Road, especially to the north where oncoming traffic would be pushed closer to the junction than the existing situation. Notwithstanding that the personal injury accident records might not reveal a complete history of incidents at the Main Road junction, and the poor nature of the road surface causing additional hazard, in all scenarios, the situation would be improved from the existing situation. If there were parked vehicles within the hatched areas, reducing visibility, this in itself would likely slow traffic on approach to and through the junction.
22. There is no substantive evidence that vehicles approaching the priority section would drive faster than they do now. With regard to the above, and given the adequate visibility through the priority section itself, there is no compelling evidence to substantiate claims that a reduced speed limit would be necessary on Main Road.
23. Despite their unrestricted nature, speeds on Back Lane and Nethermoor Road close to the site junction are already recorded as being below 20 miles per hour. Given the alignment and width of these roads, this is unsurprising and, in light of this, a reduction in speed limit is not necessary to make the proposed visibility and junction arrangements acceptable.
24. Therefore, I find that a TRO is not necessary to make the development acceptable in planning terms. While I understand that the appellant was willing to apply and pay for one, that does not make it necessary.
25. On street parking is clearly at a premium in Middlezoy. Even without a TRO, people should not be parking close to junctions, but the presence of hatching might provide further deterrent and result in a loss of on-street parking. However, there is no detailed evidence that parking regularly occurs within the proposed hatched areas, that are very close to the junction in any event, nor that the small loss would have a significant effect on the quality of life of village

- residents or viability of The George Inn. I, therefore, give this matter limited weight.
26. There are no footways around the junction, which is on a route likely to be used by children to walk to school. However, no concerns have been raised by the LPA or LHA in this regard, and given the existing highway configuration and the lack of footways in much of the wider village, I have no reason to find that any harm would arise.
27. Early LHA comments, and a road safety audit commissioned by the Parish Council identified further concerns, including those about visibility at the proposed access and pedestrian conflicts on Nethermoor Road. People may use Nethermoor Road to walk between the site, other parts of the village, and the village hall and playing fields. I understand that residents use Back Lane and Nethermoor Road as part of a circular recreational route and that many navigational aids direct drivers this way to the village hall.
28. However, while there is no way to control how traffic would approach the site, the LHA accept that most traffic will use the Main Road junction. Ultimately, the potential for adverse effects arising from pedestrian and vehicular conflict on Nethermoor Road and Back Lane were not raised in the final comments of the LHA, nor were they reasons for refusal of the planning application. Even though there may be some additional pedestrian and vehicular flows along Nethermoor Road, there is no substantive evidence that the existing arrangements are harmful to pedestrian safety or would worsen with additional movements.
29. The modifications to the Main Road junction would not address other existing shortcomings on the highway network, such as blind bends or any flooding problems. However, for the reasons given, they would be sufficient, by themselves, to mitigate any effects of increased traffic movements arising from the development. Notwithstanding my analysis, even if parking and speeds were unchanged from now, the junction would not continue to operate as before as the priority system would introduce single direction running and, therefore, reduced opportunities for vehicular conflicts.
30. Overall, therefore, I find that the proposal would not have an adverse effect on highway safety and there would be no conflict with those aims of Policies D13 or D14 of the Sedgemoor Local Plan 2019 (LP) that require development to be compatible with existing transport infrastructure and not compromise the safety and/or function of local road networks.

Other Matters

31. LP Policy S2 sets out that at Tier 3 settlements such as Middlezoy, the focus will be on delivering development that fulfils identified housing need, supports a prosperous rural economy, and contributes to priority local infrastructure and services. It indicates that, where justified, sites may be released outside but well related to settlement boundaries and the Council's Policy Service Manager has confirmed that the scale of development is appropriate for Middlezoy. LP Policy T3a provides further detailed criteria including that affordable and market housing proposals on sites specifically released for that purpose, should only be permitted where it is demonstrated that a number of criteria are met.
32. The proposal is supported by a planning obligation that secures on-site affordable housing and a financial contribution that the planning officer's report

confirms is compliant with the 40% minimum required by Policy T3a. While that would not meet the entirety of an identified need for Middlezoy, it would make a meaningful contribution to fulfilling it and on that basis I have no reason to disagree with the Council officer's position that the proposal is compliant with the affordable housing criteria of the Policy. There is reference to the availability of previously developed land, but no substantive evidence that sufficient or suitable land is available to meet the identified affordable housing needs of the locality.

33. There is much reference in the evidence of interested parties and the Parish Council to an alternative site that it is said could deliver 100% affordable housing with locally controlled occupancy, and a village shop, thereby meeting the requirements of the village, and not subjecting it to increases in market housing. However, a timetable for delivery of that site not only appears to be very fast, but is reliant on obtaining grant funding, planning permission and securing contractors. Ultimately, the likelihood of delivery of that site as anticipated has not been substantiated by detailed evidence and I can attach very little weight to its ability to address current local housing needs in a meaningful time. In any case, and even if development of that site comes to fruition, there is no obvious reason why some of the provision should not be made on the appeal site and I must determine this appeal based upon the situation now, where there remains a substantial unmet housing need.
34. The site is at the edge of the village and so would represent a sizable incursion into the countryside, changing the relationship of this part of Back Lane with the undeveloped fields beyond, and be visible from the Main Road junction. However, it would be close to other existing housing such that it would not fundamentally alter the form of the settlement or its overall relationship with the surrounding countryside. Subject to conditions protecting existing trees and hedgerows as far as possible, and introducing new landscaping to the rural edge, there is, therefore, no substantive evidence to lead me away from the Council officer's conclusions that the proposal would not harm the character, appearance, or physical identity of the settlement, nor the wider area more generally.
35. There would be a reduction in agricultural land close to the grade II listed Merricks Farmhouse. However, the Council have explained that no harm would arise to its setting given the separation distance and intervening barn that is being converted to a separate residential unit. Given the domestic appearance of the barn and its garden, I have no reason to disagree with that assessment and find that the setting of the listed building would be preserved and its significance unharmed. Whether or not the adjoining Wynberg should be considered a non-designated heritage asset, it would retain an edge-of-settlement location and, thereby I find that its significance would not be harmed.
36. The proposal would be visible from within dwellings on the opposite side of Nethermoor Road and Back Lane and would obstruct some existing views of the countryside from these locations. However, the new dwellings would be at a sufficient distance to avoid any harm to living conditions of neighbouring residents by way of overlooking or overbearing impacts. There is no substantive evidence that increases in noise and disturbance from the proposed residential uses, including any traffic, would be so significant as to result in harmful living conditions.

37. Subject to conditions, Somerset Wildlife Trust, the Council's ecologist and planning officer have confirmed that no harm to ecology would arise and I have no reason to disagree with that position. The site has been confirmed to be outside the catchments where increased nutrient discharge from the site could affect the integrity of European protected habitats sites.
38. Given the size and shape of the settlement, and notwithstanding the lack of footways, the school, church and village hall are all within walking distance of the site. There are, therefore, opportunities for walking and cycling to local services and facilities and the recent significant reduction in services and facilities at nearby Othery would not alter that, nor introduce any conflict with the relevant criterion of Policy T3a.
39. Criticism of the engagement with the local community has been levelled at the developer. However, such is only encouraged by Policy T3a and in the absence of any demonstrable harm arising from the development, would not lead to any conflict with the Policy read as a whole. On the basis of the above, I concur with the Council's conclusion that the proposal complies with LP Policies S2 and T3a.

Planning obligations

40. Planning obligations have been provided that would secure the delivery of, and contributions to, affordable housing, open space, the NHS and highway works. I have no reason to find that these are not necessary and, therefore, compliant with the relevant tests in the Community Infrastructure Levy Regulations 2010 (as amended). I have, therefore, taken account of them¹ in reaching my decision and conclude that they would secure policy compliant affordable housing, and mitigate adverse effects that could arise to local infrastructure.
41. In addition, there is a separate undertaking relating to the creation of a TRO. For the reasons given in respect of the main issue in this appeal, this is not necessary. These matters², therefore, can be given no weight in determining the appeal and I have not taken the obligations in this document into account in reaching my decision.

Conditions

42. A plans condition is necessary in the interests of clarity. Conditions are required to secure the site access, off-site highway works, a construction management plan, repair of damage to the highway and details of the internal road construction in the interests of highway safety. In the case of the latter, I have simplified the Council's suggested condition, removing a lengthy list of generic requirements, some of which duplicate requirements of other conditions so that the parties can agree what is necessary in this particular case. To promote travel by non-car means, a condition is required to secure a travel statement.
43. To protect biodiversity, a Construction Environmental Management Plan and Landscape and Ecological Management Plan, approval of detailed biodiversity mitigation and enhancement measures, an external and street lighting design, and amphibian friendly drainage details are required. To ensure the

¹ Being those in the agreement between Somerset Council, Christine Pring, Summerfield SD3 Ltd and others made 28 July 2023.

² Being those in Schedule 1 'Covenants in respect of highways' of the undertaking given by Christine Pring, Summerfield SD3 Ltd and others to Somerset Council, made 28 July 2023.

remediation of contaminated land, a scheme to deal with any contamination should be prepared.

44. In the interests of the character and appearance of the area, conditions are required to secure details of external materials, the protection of existing trees and new site landscaping. The Council has suggested a condition that requires approval of landscaping with some prescriptive requirements. However, a detailed plan has already been provided and listed by the Council as one of the plans that development should be carried out in accordance with. In the absence of any indication that those proposals are inadequate, my condition simply requires its implementation. In the interests of understanding the historic environment, a condition is also required to investigate and record any on site archaeology.
45. To prevent any increase in flood risk, a condition is required to secure implementation of the submitted drainage scheme. LP Policies S5 and D3 seek to reduce the energy demand of new development and a strategy has been provided setting out proposed measures for this development. A condition is necessary to secure implementation. Whether or not that would take the proposal beyond the energy performance required by current building regulations, such is not a requirement of the policy.
46. The Council has suggested a condition relating to the sourcing of local labour. However, the reason for the condition is said to be LP Policy D15, which relates to employment development and while there is also reference in the evidence to an employment and skills charter, it is not clear what the status of this document is. There is, therefore, no clear justification for the condition in relation to this housing scheme. I have, therefore, not imposed one. A condition preventing development that would obstruct a public right of way is also suggested. However, comments from the Council's Rights of Way Officer indicate that the grant of permission does not automatically allow for the obstruction or blocking up of a right of way and the plans show it to be safeguarded in any event. Therefore, the condition is not necessary.
47. I have made some changes to the wording of the Council's suggested conditions in the interests of precision, clarity and consistency. I have also removed references to other legislation, guidance or policy such that the parties can agree the details with reference to the most relevant and up to date guidance at the time.

Conclusion

48. For the reasons given, I conclude that the proposal accords with the development plan. No material considerations have been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it.
49. Therefore, the appeal is allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
710 001A, 710 050 Rev. L, 710 051 Rev. C
710 061 Rev. D, 710 062 Rev. D, 710 063 Rev. C, 710 064 Rev. D,
710 065 Rev. E, 710 066 Rev. B, 710 068 Rev. B, 710 070 Rev. A,
710 071 Rev. C, 710 072 Rev. A, 710 073 Rev. A, 710 074 Rev. A,
710 078 Rev. A, 710 079, 710 080,
1017-02 Rev. A, 1017-03,
11651-HYD-XX-XX-DR-TP-0505 Rev. P01,
11651-HYD-XX-XX-DR-TP-0201 Rev. P03,
11651-HYD-XX-XX-DR-TP-0502 Rev. P03,
MID-HYD-XX-XX-DR-C-1200 Rev. P04,
MID-HYD-XX-XX-DR-C-1201 Rev. P04,
MID-HYD-XX-XX-DR-C-1300 Rev. P02.
- 3) No development hereby approved shall be commenced unless the off-site improvements to Back Lane and the junction of Back Lane/Main Road, have been fully implemented in accordance with the details shown on drawing numbers:
 - 11651-HYD-XX-XX-DR-TP-0201 Rev. P02
 - 11651-HYD-XX-XX-DR-TP-0502 Rev. P03
 - 11651-HYD-XX-XX-DR-TP-0504 Rev. P02.
- 4) No development shall commence until a condition survey of the existing public highway in the vicinity of the site has been carried out, submitted to, and approved in writing by, the Local Planning Authority. Any damage to the highway occurring as a result of this development shall be remedied by the developer within 6 months of the occupation of the 26th dwelling in a manner that shall previously have been approved in writing by the Local Planning Authority.
- 5) No development shall commence until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. Such plan shall include measures to manage the traffic impacts of the development and shall set out the methods of construction and hours of operation along with measures to control noise and dust. Once approved, all construction works shall be carried out in accordance with the measures set out in the approved Plan.
- 6) No development shall commence (including demolition, ground works, and vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
 - Risk assessment of potentially damaging construction activities,
 - Identification of "biodiversity protection zones",

- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts to ecological receptors during construction (may be provided as a set of method statements),
- The location and timing of sensitive works to avoid harm to biodiversity features,
- The times during construction when specialist ecologists need to be present on site to oversee works,
- Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority,
- The role and responsibilities on site of an Ecological Clerk of Works,
- Use of protective fences, exclusion barriers, root protection zones, and warning signs
- Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 7) No development shall commence until a scheme to deal with contamination of the site has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall include:

- An investigation and assessment to identify the extent of contamination,
- a remediation plan to address any contamination found,
- measures to be taken to avoid any risk to the public and environment when the site is developed,
- steps to be taken in the event that any unexpected contamination is found during the course of the development,
- any monitoring necessary to assess effectiveness of the proposed remediation,
- provision of reports as necessary to confirm the outcome of the remediation strategy.

The development shall thereafter be carried out in accordance with the approved measures.

- 8) No development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include:

- Description and evaluation of features to be managed,
- Ecological trends and constraints on site that might influence management,
- Aims and objectives of management,
- Appropriate management options for achieving the aims and objectives,
- Prescriptions for management actions,

- Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period),
- Details of the body or organization responsible for implementation of the plan,
- On-going monitoring and remedial measures,
- Details of the mechanisms by which the long-term implementation of the LEMP will be secured by the developer with the management body responsible for its delivery,
- In the event that the results from monitoring show that the aims and objectives of the LEMP are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan shall be implemented and thereafter retained as specified in accordance with the approved details.

- 9) No development shall commence until the applicant, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has previously been submitted to and approved in writing by the Local Planning Authority. The WSI shall include details of the archaeological excavation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results. The development hereby permitted shall be carried out in accordance with the approved scheme.

No building shall be occupied until the site archaeological investigation has been completed and post-excavation analysis has been initiated in accordance with the agreed Written Scheme of Investigation and provision made for analysis, dissemination of results and archive deposition.

- 10) No development shall commence (including any site clearance) until temporary protective fencing has been erected around all retained trees and hedgerows in a location that shall previously have been submitted to and approved in writing by the Local Planning Authority, in line with root protection areas (RPA). No fires shall be lit, plant, materials, liquids, or rubbish tipped, dumped or stored, within defined root protection areas. No underground services shall be located within the RPAs without prior written approval of the Local Planning Authority. The temporary protective fencing shall be retained for the duration of the works and shall not be altered or realigned without prior written approval of the Local Planning Authority.

- 11) Prior to the construction of the internal site road, full details of the construction of the roads, footways, parking and turning areas, and highway drainage shall be submitted to and approved in writing by the Local Planning Authority. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

The development shall be carried out in accordance with the details approved. The approved roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and

surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

- 12) Prior to construction of the site drainage, details of 'amphibian friendly' drainage structures, including gully pots and kerbing shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and those specified on drawing numbers MID-HYD-XX-XX-DR-C-1200 Rev. P04 and MID-HYD-XX-XX-DR-C-1201 Rev. P04 prior to the first occupation of the development hereby permitted and shall thereafter be maintained in good working order at all times.
- 13) Prior to the installation of street lighting or any external lighting to the communal areas, a lighting design for wildlife (particularly bats) shall be submitted to and approved in writing by the Local Planning Authority. The design shall show how and where external lighting will be installed so that it will not disturb or prevent bats and other wildlife using their territory or features. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the approved design. No other external lighting shall be installed without prior written approval of the Local Planning Authority.
- 14) Prior to their installation, details of the following items shall be submitted to and approved in writing by the Local Planning Authority:
 - a) materials (including the provision of samples where appropriate) to be used for all external walls and roofs;
 - b) the design, materials and external finish for all external doors and windows;
 - c) all roof eaves, verges and abutments and all new guttering, down pipes and other rainwater goods, and external plumbing;
 - d) all hard surfacing and boundary treatments.Once approved such details shall be implemented prior to the occupation of the dwelling to which they relate and thereafter maintained as such.
- 15) No dwelling hereby approved shall be occupied unless the site access has been fully implemented in accordance with details shown on drawing number 710 050 Rev. L.
- 16) No dwelling hereby permitted shall be occupied unless a Measures-only Travel Statement has been submitted to and approved in writing by the Local Planning Authority. Such Statement should include a timetable for soft and hard measures to promote sustainable travel. The measures shall be implemented in accordance with the timetable and once approved shall thereafter remain effective at all times, unless an alternative time provision is approved in the timetable.
- 17) The dwellings hereby permitted shall not be occupied until measures for the enhancement and protection of biodiversity have been installed in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Such enhancement measures shall include:
 - 6x built-in bat roosting features. These must be installed on southern elevations at least 4m above ground level,

- 6x built-in nesting bricks for swifts. These must be installed on northern or eastern elevations below roof eaves across Plots 10 - 22, with clear flightpaths (i.e. gardens),
- 6x solitary bee bricks installed on to southern elevations approximately 1m above ground level,
- Hedgehog friendly fencing to incorporate accessible hedgehog holes, measuring 13cm x 13cm to allow the movement of hedgehogs into and out of the site,
- The planting of native trees and native hedgerows,
- The Detention Basin to be sown / seeded with native emergent and native marginal flora.

The approved measures shall thereafter be maintained as such.

- 18) Prior to the occupation of the first dwelling, site drainage shall be installed in accordance with the details shown on drawing numbers MID-HYD-XX-XX-DR-C-1200 Rev. P04 and MID-HYD-XX-XX-DR-C-1201 Rev. P04 and shall thereafter be maintained in good working order.
- 19) No dwelling hereby approved shall be occupied unless it has been constructed and fitted out in accordance with the recommendations of the Energy Strategy Statement (May 2022) submitted with the application. The installed measures shall thereafter be maintained as such.
- 20) The landscaping scheme shown on the approved plans shall be fully carried out within nine months from the date of the first occupation of the development. The trees/shrubs shall be protected and maintained, and any dead or dying trees/shrubs within the first 5 years from planting shall be replaced within the next available planting season.

End of Conditions



Costs Decision

Site visit made on 12 October 2023

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Costs application in relation to Appeal Ref: APP/V3310/W/22/3313542 Land at OS GR 337743 132821, Back Lane, Middlezoy

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Summerfield Homes for a full award of costs against Somerset Council.
 - The appeal was against the refusal of planning permission for erection of 26 dwellings, incidental open space, drainage, landscaping and associated infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Preliminary matters

2. While the decision on the planning application was made by Sedgemoor District Council, local government reorganisation means that the application for an award of costs is against the successor authority, Somerset Council.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The application for a full award of costs was made in the context of no appeal statement having been submitted by the Council. I later accepted that statement, which clarifies the reason for refusal and gives further explanation of the Council's position. The costs application, nevertheless, also alleges unreasonable behaviour in that the Council's reason for refusal does not stand up to scrutiny.
5. In defence of the reason for refusal, the Council's statement gives clear reasons as to why an application for a Traffic Regulation Order (TRO) may not be successful. Accordingly, the alleged uncertainty in the TRO process noted in the reason for refusal has been logically and clearly explained.
6. However, the necessity of the TRO has not been fully substantiated by robust evidence. In its statement of case, the Council relies upon Local Highway Authority (LHA) comments from between 6 and 12 months before the planning committee date setting out what was required. By the time of the committee meeting, further comments had been provided from the LHA setting out its final position recommending approval to the proposal and the planning officer reported the LHA's view that a TRO was not required.

7. While a planning committee is not duty bound to follow the advice of its officers, no technical evidence has been provided by the Council since to support its position. Instead, somewhat vague assertions are made about possible effects of parked cars in the vicinity of the site and Main Road junction, and that vehicles may overrun the new markings. There is a lack of objective analysis or detailed evidence about parking behaviour and the latter is not a matter that would be prevented by the anticipated TRO in any event.
8. The Council's submissions about the Main Road junction are, largely, based upon the assertion that, without restrictions, it would continue to operate as it currently does. But that ignores the effects of the one-way, priority operation and there is no demonstration that any parking or speed restrictions are needed for that component to operate safely. The junction would not, therefore, continue to operate as it currently does.
9. The statutory consultee's clearly stated position, within the evidence, is that harm would not arise without a TRO. The Council suggests that the appellant's reliance on this is misplaced, particularly around the need to secure any passing place in perpetuity. However, this position avoids any analysis of the likelihood of parking obstructing the identified passing places, or within the visibility splays at the Main Road junction. A lack of detailed written explanation by the LHA as to why the TRO is not required is not in itself evidence of harm, which, in the face of the LHA's position, the Council must now demonstrate. Fundamentally, the LPA have relied upon an alleged lack of evidence for the TRO not being required, rather than providing robust evidence that harm would arise without it.
10. For these reasons, the reason for refusal has not been substantiated by objective analysis and does not stand up to scrutiny. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred. As this goes to the heart of the only reason for refusal, a full award of costs is therefore warranted.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Somerset Council shall pay to Summerfield Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Somerset Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Bale

INSPECTOR